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Attorney for Plaintiff
SUSAN RAE OWENS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SUSAN RAE OWENS,

Plaintiff,

v.

ERICAL BRACHFELD, A PROFESSIONAL
CORPORATION, D/B/A BRACHFELD &
ASSOCIATES, P.C., D/B/A LAW OFFICES
OF BRACHFELD & ASSOCIATES, P.C., a
California corporation, and ERICA LYNN
BRACHFELD, individually and in her official
capacity,

Defendants.

Case No. 07-04400-JF-PVT

**DECLARATION OF FRED W.
SCHWINN IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

[Fed. R. Civ. P. 56(e)]

I, Fred W. Schwinn, declare under penalty of perjury, under the laws of the United States,
28 U.S.C. § 1746, that the following statements are true:

1. I am counsel for the Plaintiff in the above captioned case.

Defendants' Answer

2. On or about September 21, 2007, I received a copy of the Answer filed by
Defendants, Erica L. Brachfeld, A Professional Corporation, and Erica Lynn Brachfeld (hereinafter
"Defendants"). Upon review of Defendants' Answer I discovered that it failed to comply with Fed.
R. Civ. P. 8(b) in that it was a general denial and contained only state law affirmative defenses.

3. On September 22, 2007, I drafted and mailed a letter to Ms. Brachfeld
outlining the deficiencies in the filed Answer. I informed Ms. Brachfeld that any averments in the

1 Complaint which are not denied are deemed admitted pursuant to Fed. R. Civ. P. 8(d). I further
2 informed Ms. Brachfeld that it was inappropriate to claim state-law affirmative defenses in response
3 to a federal cause of action. Finally, I suggested that Ms. Brachfeld should avail herself of the
4 limited opportunity to file an Amended Answer provided by Fed. R. Civ. P. 15(a). A true and
5 accurate copy of the letter that I sent to Ms. Brachfeld on September 22, 2007, is attached hereto,
6 marked Exhibit "3," and by this reference is incorporated herein.

7 4. I received no response to my September 22, 2007, correspondence.

8 5. On December 7, 2007, the parties attended a Case Management Conference
9 with the Court. At that Case Management Conference I explained to the Court and Defendants'
10 counsel that Defendants' Answer was deficient and that Plaintiff would file a Motion for Summary
11 Judgment if Defendants' Answer was not amended to comply with the Federal Rules of Civil
12 Procedure.

13 6. As of the date of this Declaration, Defendants have not amended their Answer
14 in this case.

15 **Defendants' Business Name**

16 7. On August 25, 2007, I searched the California Secretary of State's website
17 for a corporation named "law offices of brachfeld & associates pc." There were no results for a
18 corporation with this name in California. A print out of this result page was produced to Defendants
19 as part of Plaintiff's Initial Disclosures and bates stamped with the number "100006." A true and
20 correct copy of this result page is attached hereto and marked Exhibit "4," and by this reference
21 incorporated herein.

22 8. On August 25, 2007, I searched the California Secretary of State's website
23 for a corporation named "law offices of brachfeld & associates." There were no results for a
24 corporation with this name in California. A print out of this result page was produced to Defendants
25 as part of Plaintiff's Initial Disclosures and bates stamped with the number "100007." A true and
26 correct copy of this result page is attached hereto and marked Exhibit "5," and by this reference
27 incorporated herein.

28 9. On August 25, 2007, I searched the Los Angeles County Registrar Office's

1 website for the registered fictitious business name "law offices of brachfeld & associates pc."
2 There were no results for a fictitious business with this name in Los Angeles County. A print out
3 of this result page was produced to Defendants as part of Plaintiff's Initial Disclosures and bates
4 stamped with the number "100008." A true and correct copy of this result page is attached hereto
5 and marked Exhibit "6," and by this reference incorporated herein.

6 10. On August 25, 2007, I searched the California Secretary of State's website
7 for a corporation named "brachfeld & associates pc." There were no results for a corporation with
8 this name in California. A print out of this result page was produced to Defendants as part of
9 Plaintiff's Initial Disclosures and bates stamped with the number "100005." A true and correct copy
10 of this result page is attached hereto and marked Exhibit "7," and by this reference incorporated
11 herein.

12 11. On August 25, 2007, I searched the Los Angeles County Registrar Office's
13 website for the registered fictitious business name "brachfeld & associates pc." There were no
14 results for a fictitious business with this name in Los Angeles County. A print out of this result page
15 was produced to Defendants as part of Plaintiff's Initial Disclosures and bates stamped with the
16 number "100009." A true and correct copy of this result page is attached hereto and marked Exhibit
17 "8," and by this reference incorporated herein.

18 12. On August 25, 2007, I searched the California Secretary of State's website
19 for any corporation which included the word "brachfeld" in its name. There was only one result,
20 a corporation named "Erica L. Brachfeld, A Professional Corporation." A print out of these results
21 pages were produced to Defendants as part of Plaintiff's Initial Disclosures and bates stamped with
22 the numbers "100003" and "100004." A true and correct copy of these result pages are attached
23 hereto and marked Exhibit "9," and by this reference incorporated herein.

24 13. On or about November 7, 2007, Debra Bowen, Secretary of State of the State
25 of California, certified that "there is no record of a California or foreign corporation, active or
26 inactive, of the name: **LAW OFFICES OF BRACHFELD & ASSOCIATES, P.C.**" The
27 Certificate of NonFiling Corporation was produced to Defendants as part of Plaintiff's Initial
28 Disclosures, bates stamped with the number "100010." A true and correct copy of this document

1 is attached hereto and marked Exhibit "10," and by this reference incorporated herein.

2 14. On or about December 19, 2007, Debra Bowen, Secretary of State of the State
3 of California, certified that "there is no record of a California or foreign corporation, active or
4 inactive, of the name: **BRACHFELD AND ASSOCIATES, A PROFESSIONAL**
5 **CORPORATION.**" The Certificate of NonFiling Corporation was produced to Defendants as part
6 of Plaintiff's Supplement to Initial Disclosures, bates stamped with the number "100011." A true
7 and correct copy of this document is attached hereto and marked Exhibit "11," and by this reference
8 incorporated herein.

9 **Defendants are Debt Collectors**

10 15. On December 27, 2007, I visited Defendants' internet website and
11 downloaded a web page titled "About Us." Defendants' website describes Defendants' primary
12 business as debt collection on behalf of third-parties. The URL of Defendants' "About Us" web
13 page is: http://www.brachfeldcollections.com/pages/about_us.htm. A true and correct copy of
14 Defendants' "About Us" web page as of December 27, 2007, is attached hereto and marked Exhibit
15 "12," and by this reference incorporated herein.

16 Executed at San Jose, California on December 28, 2007.

17 /s/ Fred W. Schwinn
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